

applicants' specification, the salt contains only one anionic counterion" and further that "the claim is vague and indefinite because the acid salt as claimed cannot be formed as recited, according to the applicants' disclosure. Applicants respectfully traverse.

It is clear from the specification that the salt is formed by reacting the desired alkanolamine with a mixture of at least two acids to form a mixture of two salts. As recited in claim 1 and on page 3, lines 28-30, A is a mixture of anionic counterions derived from at least two pharmaceutically acceptable acids and esters thereof. Accordingly, Applicants respectfully submit that the claims are clear and definite and the rejection should be withdrawn.

### III. Claim Rejections 35 U.S.C. § 102

#### *The Rejection In View Of Yu et al.*

The Examiner has rejected claims 13-17 as allegedly anticipated by U.S. Patent No. 4,197,316 ("Yu et al."). Applicants respectfully traverse this rejection.

Yu et al. relates to compositions and methods for treating dry skin. The compositions comprise an acid, amide or ammonium salt of  $\alpha$ - or  $\beta$ - hydroxyacids or  $\alpha$ -ketoacids and esters thereof. In contrast to the compositions and methods of the '316 patent, the present invention relates to methods to improve the appearance of facial contours.

Yu et al. fails to teach or suggest that the Yu et al. compositions could be used to improve the appearance of facial contours. Nevertheless, the Examiner argues that the "claimed method of 'improving the appearance of facial contours' is met because the prior art method is to improve a skin condition." Applicants respectfully disagree. Yu et al. does disclose a method for improving a skin condition, however, the method is clearly limited to improving skin conditions associated with dry skin, i.e., cracking, flaking or scaling of hands, feet or the body." See col. 1, lines 16-19. The methods taught by Yu et al. are clearly limited to the treatment of dry skin. Treating dry skin is different from improving facial contours. As shown by Example 8 of the present specification, over 50% of consumers tested agreed that the method of the present invention defined and reshaped the contours of their face. Accordingly, since Yu et al.

fails to teach a method for improving the appearance of facial contours, Yu et al. does not teach all the elements of the claimed invention, and Yu et al. cannot anticipate the present claims.

#### IV. Claim Rejections 35 U.S.C. § 103

##### *A. The Rejection Over Yu et al. In View of Znaiden et al. and Perricone*

The Examiner has rejected claims 1-11 and 18-23 as allegedly unpatentable over U.S. Patent No. 5,523,090 (“Znaiden et al.”) and U.S. Patent No. 5,554,647 (“Perricone”). Applicants respectfully traverse this rejection.

As discussed above, Yu et al. relates to a method for treating dry skin. Yu et al. fails to teach or suggest that the Yu et al. compositions could be used to improve skin firmness, improve the appearance of facial contours or reduce the appearance of sagging skin. Nothing in the teachings of Znaiden et al. or Perricone cure these deficiencies of Yu et al.

Znaiden et al. relates to compositions and methods for treating cellulite. The compositions contain an alpha hydroxy acid and/or an inositol phosphoric acid in combination with a xanthine. The active ingredient taught by Znaiden et al. is clearly the xanthine and the inositol phosphoric acid. Indeed, Znaiden et al. specifically teach that the alpha hydroxy acid is added to improve skin penetration of the xanthine. See, for example, col. 5, lines 30-48. Further, there is nothing in the teachings of Znaiden et al. that would teach or suggest that the specific compounds recited in the present claims could be used in methods to improve skin firmness, improve the appearance of facial contours, or reduce the appearance of sagging skin. Accordingly, Znaiden et al. fails to remedy the deficiencies of Yu et al. and the rejection should be withdrawn.

The Examiner relies upon Perricone as teaching that “topical application of acetylcholine precursors such as dimethylaminoethanol in a dermatological carrier is effective in shortening of muscles, producing increased tone, enhancing the appearance of the skin and results in a smoother, tighter and more youthful appearance for aging persons and patients afflicted with conditions that cause sagging faces.” The Examiner then argues that it would have been obvious to one having ordinary skill in the art to “have modified the invention of Yu composition by applying the composition to treat dry, flaky, wrinkled, aged, and/or sagging skin as motivated by Znaiden and Perricone.” Applicants respectfully disagree.

Applicants respectfully submit that the Examiner has failed to establish a *prima facie* case of obviousness. The Examiner simply states that “the motivation and the expectation of success is found in the collective teachings of the references that the recited alkanolamines and the alpha hydroxy acids are each well known in treating aged skin conditions.” There is nothing in the teachings of any of the references relied upon by the Examiner that would provide one of ordinary skill in the art with the expectation that one composition taught to be useful for treating one skin condition, i.e., dry skin, could also be used for treatment of a completely different skin condition, i.e., improving skin firmness. Clearly, none of the references relied upon by the Examiner, taken alone or in any combination, teach or suggest Applicants claimed methods (1) to improve skin firmness; (2) to improve the appearance of facial contours; and (3) for reducing the appearance of sagging skin comprising topically applying to affected skin areas a composition comprising an effective amount of an acid salt formed from a compound selected from the group consisting of dimethylaminoethanol, trimethylaminoethanol, isopropanoldimethyl amine, ethylethanolamine, 2-butanolamine and serine with a mixture of anionic counterions derived from at least two pharmaceutically acceptable acids and esters thereof and a cosmetically acceptable carrier. Accordingly, Applicants respectfully request that this rejection be withdrawn.

*B. The Rejection Over Yu et al., Znaiden et al., and Perricone In View of Quan et al.*

The Examiner has rejected claim 12 as allegedly unpatentable over Yu et al., Znaiden and Perricone in view of U.S. Patent No. 6,180,133 (“Quan et al.”). The Examiner recognizes that none of the references previously relied upon by the Examiner teach or suggest the material carriers recited by claim 12. Applicants respectfully traverse this rejection.

As discussed above, each of Yu et al., Znaiden et al. and Perricone fail to teach or suggest that the compounds recited in the present claims could be used to improve skin firmness, improve the appearance of facial contours or reduce the appearance of sagging skin. There is nothing in the teachings of Quan et al. that remedy these deficiencies of Van Scott et al., Yu et al., and Znaiden et al. In contrast to the claimed methods, Quan et al. relates to methods for treating wrinkles. Accordingly, none of the references relied upon by the Examiner, taken in any combination, teach or suggest the claimed invention. Applicants, therefore, respectfully request withdrawal of this rejection.

**V. Double Patenting Rejection**

The Examiner has provisionally rejected claims 13-22 as allegedly being unpatentable over claims 1, 2, 4-7, 10-12 and 14-16 of copending Application No. 09/677,737. Applicants respectfully traverse this rejection.

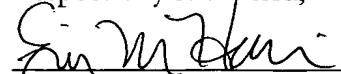
Copending Application No. 09/677,737, relates to **methods** for ameliorating redness or inflammation of mammalian skin (claims 1-10) and **methods** for ameliorating the irritating effects of a skin irritating composition (claim 11-16). The copending application fails to teach or suggest the **methods** of the presently claimed invention for improving the appearance of facial contours. Accordingly, Applicants respectfully request withdrawal of this rejection.

**VI. Conclusion**

Applicants believe that the foregoing presents a full and complete response to the outstanding Office Action. An early and favorable response to this Amendment is earnestly solicited. If the Examiner feels that a discussion with Applicants' representative would be helpful in resolving the outstanding issues, the Examiner is invited to contact Applicants' representative at the number provided below.

If there are any other fees due in connection with the filing of this response, please charge the fees to our Deposit Account No. 10-0750/JBP-534/EMH. If a fee is required for an Extension of time 37 C.F.R. § 1.136 not accounted for above, such an extension is requested and the fee should also be charged to our Deposit Account.

Respectfully submitted,



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